

**Baldwin County School District's Objections and  
Modifications to Terms of Site Visits**

*General Health and Safety Precautions*

In an effort to limit the number of personnel in any given facility at one time, the United States intends to conduct inspection of the identified premises in two separate teams. One team will inspect the premises on the first date identified in the subpoena and the second team will inspect the premises on the second date identified in the subpoena. Each team will consist of a maximum of two DOJ employees and two experts, and DOJ will provide the names of the members of the visiting teams one week in advance of the site visit. All DOJ team members have been fully vaccinated against COVID-19 and will wear masks during the entirety of the visit, regardless of whether the underlying facility operates under a mask mandate. Team members will abide by any sign-in policies and procedures regularly applied to visitors to the premises. The United States requests that either the regional GNETS program director or another GNETS site-based administrator accompany each team during the entirety of the inspection of the identified premises. In the event a student has a crisis or any other urgent school-based situation arises, members of the team will immediately follow the regional GNETS program director or GNETS site-based administrator's instructions for responding to the crisis/situation.

**Response: The District objects to the number of individuals that may enter a District classroom. By the District's count, there could be a total of 10 adults involved in this inspection (2 U.S. experts, 2 U.S. attorneys, 2 state attorneys, 1 state expert, 1 GNETS Director, 1 District attorney, and 1 District administrator). A total of 10 adults in a classroom is in itself a distraction and will interrupt classroom instruction. The District administrator is the appropriate person to identify the number of adults that will be allowed in the classroom at one time to minimize a disruption in instruction. If all 10 adults cannot enter the classroom, the District administrator can provide opportunities for the other adults to observe from the classroom door or take turns.**

*Experts*

The purpose of these site visits is to allow the United States' experts an opportunity to access the information they need to form opinions in the matter of *United States v. Georgia*, No. 16 Civ. 3088 (N.D. Ga.). Each of the United States' experts (Jeff Anderson, Mary Jo Dare, Amy McCart, and Melinda Mitchiner) specializes in the field of special education and has extensive experience in touring educational facilities, observing classroom instruction, and assessing student engagement in a manner that minimizes disruption to school operations. As stated above, the names of the specific experts and DOJ personnel whom the United States expects to be in attendance during the site visit will be provided one week in advance of the visit.

**Response:** The District does not have any objection. The name of the experts and specific attorneys must be provided to the District’s attorney one-week in advance of the visit.

*Timing*

While this subpoena identifies an 8 hour time range for inspection on account of yet-to-be-determined start and end times, the total length of a single team’s inspection of the premises shall not exceed 3.5 hours. In most cases—particularly in facilities where there are smaller numbers of students in the GNETS program—the length of the site visit will be significantly shorter. So long as total inspection time for a single team does not exceed 3.5 hours, the experts’ time spent on any particular aspect of the site visit shall not be limited. In advance of the visit, the United States will work with counsel to identify more specific arrival and departure times that do not interrupt the start or dismissal of school.

**Response:** The District objects to the 3.5 hour inspection period. 3.5 hours is a significant portion of the school day for each of these schools. The typical school day is seven hours. School start times are as follow for the District:

	Start Time	End Time
Elementary	7:45 a.m.	2:45 p.m
Middle	8:15 a.m	3:15 p.m.
High School	8:15 a.m	3:15 p.m.

The District shall establish a schedule of the classrooms to visit and the common areas because they are in the best position to determine such schedule. Visits to classrooms should be limited to 10-15 minute observation periods to significantly shorten the disruptions to the students’ school day(s). The schedule shall be established no later than one-week prior to the site visit.

*Physical Inspection*

Each site visit team will tour the premises and have the opportunity to inspect the following areas:

- Any classrooms that serve any student enrolled in the regional GNETS program (regardless of whether the classroom is a dedicated GNETS classroom or general education classroom where a GNETS program spends a portion of the day);
- Any classrooms or other areas linked to “specials,” “connections,” or “electives” (e.g. art, music, theatre, band, career tech);
- Media Center/Library
- Gymnasium;
- Cafeteria;
- Science Labs;
- Computer Labs;
- Playground/Outdoor Athletic Facilities;
- Sensory Rooms and/or De-escalation Rooms;

- Any rooms that are used to provide therapeutic service, whether to students in the GNETS programs or to students with or without disabilities in the general education school;
- Counseling office/center;
- Nurse's office/center;
- Nurse's office/station;
- Storage rooms/closets within GNETS school-based classrooms or standalone GNETS centers; and
- Any other area of the premises accessed or utilized by students in the GNETS program not specifically identified above.

**Response:** The District objects to any of the above items that do not apply to the District's facilities. The District understands that GNETS of Oconee has provided the United States with maps of the facilities and additional documentation that addresses many of the above demands. The District objects to the inspection of general education classrooms that have GNETS students enrolled in them. The inspection will impact the school days of approximately 3,042 students in the District. The District wants to minimize the number of classrooms that are interrupted by the inspection. The District, in coordination with Oconee GNETS, should have the authority to identify one or two general education classrooms where GNETS students attend a portion of their day.

The District objects to the inspection of storage facilities in classrooms while instruction is taking place. Having a group of adults open a storage closet and inspect the closet is a clear distraction. The District further objects to the relevancy of this request. To the extent that the United States may be alleging that the District is isolating or secluding students in storage closets, the District denies any such allegation. By way of further response, the District reminds the United States that the Georgia Department of Education prohibits the use of seclusion or isolation in a separate room. See GaDOE Regulation 160-5-1-.35(1)(e) and (2)(a), Seclusion and Restraint for All Students.

The experts on each team shall be permitted to ask questions of the GNETS director or site-based administrator that are incidental to the inspection of the premises. This includes questions about the specific use(s) of particular rooms or areas of the building, the extent to which GNETS students are permitted to use those rooms or areas of the building, basic facts regarding the nature of any classrooms entered and/or observed (e.g., the grade level(s) of the classroom, subject matter, etc.) whether classroom attendance that day reflects actual enrollment, the job title of school staff interacting with students, and, generally what students are working on. To minimize disruptions to classroom instruction, the experts shall refrain from asking such questions inside of individual classrooms where instruction is occurring.

**Response:** The District objects to questions to its employees. Questions during an inspection are outside the scope of a premises inspection. See *Belcher v. Bassett Furniture Industries, Inc.*, 588 F. 2d 904, 909-910, (1978)<sup>1</sup>.

The District objects to the inspection of “any other area of the premises accessed or utilized by students in the GNETS program not specifically identified above.” This overly broad request would allow the U.S.’s experts to enter any room they believe necessary with no prior notice. The District further objects to the inspection of student restrooms or any other room that would result in a violation of a student’s privacy.

#### *Classroom Observations*

Each team inspecting the identified premises will have the opportunity to observe classroom instruction or any other activity taking place in all GNETS classrooms and any general education classroom that serves a student in the GNETS program (“qualifying classrooms”). The two experts on each team and one DOJ employee shall have the right to enter each qualifying classroom to conduct observations. The experts shall make all reasonable efforts to stand and/or sit in the area of the classroom least likely to cause disruption.

**Response:** District administrators are familiar with the school building and the layout of each classroom. District administrators also observe teachers providing instruction to students and are familiar with their teaching styles. Therefore, District administrators are in the best position to determine the location in the classroom where the observation would take place.

Experts shall have reasonable leeway to adjust their position within the classroom where needed to observe what students are working on and students’ level of engagement.

**Response:** The District objects to this vague request and based on prior experience with the experts for the United States is concerned that the experts will exercise this “leeway” to encroach into a student’s personal space and insert themselves into the classroom. A student’s school day should not be interrupted by an expert that encroaches on their personal space to allegedly engage in the student’s level of engagement.

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<sup>1</sup> “Any opinions gathered by the expert through such one-sided questioning, going inescapably to one of the issues on discrimination, would consist in large part of unsubstantiated hearsay. While the presence of defendant’s attorneys will give the interrogations the appearance of depositions, the safeguards of true depositions will be absent. The employees will not be under oath, their answers will not be recorded, and they will not be subject to cross examination. The plaintiffs’ suggestion that defendant’s attorneys could control the questioning, objecting to certain questions or instructing employees not to answer them, would at the very least, lead to confusion and disruption in the assembly line setting. The very suggestion itself lends credence to the suspicion that the interrogations are intended as substitutes for depositions. The requirements and safeguards prescribed by the Federal Rules for deposing witnesses cannot be so easily circumvented.....We see no reason why the plaintiffs should not engage in normal methods of deposing witnesses prior to requesting the sweeping relief they see here.”, *Belcher* at 909-910.

The duration of the classroom visit will be determined by the experts.

**Response:** The District is concerned this will lead to a lengthy and disruptive observation of a classroom. The purpose of this inspection is to provide the experts with an overview of the GNETS classroom. Further, the District administrator is in the best position to determine if the classroom is becoming distracted. The District believes a compromise can be reached that would allow the experts to view the classroom for a set period of time, such as 10-15 minutes.

If requested, the experts shall be permitted to return to a classroom already observed for additional observation.

**Response:** The District objects as such a request will lead to multiple interruptions of instruction. The purpose of the school day is for students to learn, not be interrupted by an expert as part of federal litigation. One visit per classroom is sufficient and will minimize disruptions to the classroom learning environment.

Additionally, experts shall be permitted to observe—either from a stationary position in a classroom or in a hallway—periods of transition where students in the GNETS program move to and from classrooms or other areas of the school facility.

**Response:** The District is familiar with its students and is in the best position to determine if the observation of a transition within the scheduled timeframe is possible as well as the location of the observation.

At no time during the observation will the experts question or otherwise engage students or classroom personnel beyond exchanging pleasantries (e.g., responding to a “hello,” saying “thank you” or smiling). In the event classroom personnel or students speak to the experts unprompted, the experts will minimize communication by responding with a nod or by saying “thank you” or “okay.”

**Response:** The District agrees to these responses to end the interaction with a student. The District objects to the experts initiating students in any type of interaction.

#### *Expert and Team Member Documentation*

The experts participating in the inspection of the premises shall have the right to document the nature, condition, and appearance of the premises via photographs so long as the photographs taken do not include students, parents/guardians, building personnel, or any other images that implicate the Family Educational Rights and Privacy Act. No other limitations shall be placed on the experts’ right to photograph the premises.

**Response:** The District objects to any photographs being taken. FERPA defines an education record as those records that are: (1) directly related to the student; and

**(2) maintained by an educational agency or institution, or by a party acting for the agency or institution. See 34 C.F.R. §99.3. The District is responsible for maintaining education records for its students and is in the best position to determine what may or may not be an education record. Counsel for the District or a District employee may take any photographs requested to preserve said photos.**

All members of the DOJ team, including experts, participating in the inspection of the premises shall have the right to document any part of the inspection by taking notes. No restrictions shall be placed on this right.

**Response: The District does not object to experts taking personal, handwritten notes.**